
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CINDY LEE GARCIA, Plaintiff-Appellant

v.

GOOGLE, INC., YOUTUBE LLC, et al., Defendants-Appellees, and NAKOULA
BASSELEY NAKOULA, a.k.a. Sam Bacile, et al., Defendants.

On Appeal from the United States District Court
for the Central District of California
D.C. No. 2:12-cv-08315-MWF-VBK

APPELLANT CINDY LEE GARCIA'S REQUEST FOR JUDICIAL NOTICE

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APPELLANT'S REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Plaintiff-Appellant Cindy Lee Garcia (“Garcia”) hereby requests that the Court take judicial notice of the following facts in support of her brief opposing an *en banc* rehearing of this case:

1. That the Copyright Office’s official procedure is to release records only when: (1) the copyright claimant consents; (2) a formal request is made with an original signature; or (3) there is a court order authorizing the release.¹

Judicial notice is permissible during an appeal. *See* FED. R. EVID. 201(d). Appropriate subjects of judicial notice include those facts that are “not subject to reasonable dispute” on the grounds that they can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See* FED. R. EVID. 201(b). Here, the facts at issue in Paragraph 1 relate to the Copyright Office’s official procedure. Because the document attached is a publication of the Copyright Office announcing that procedure, it is not subject to reasonable dispute and therefore, the underlying facts are the proper subject of judicial notice. Moreover, the facts in Paragraph 1 could not have been part of the record before now. The issue of the Copyright Office's procedure was not raised until Defendants/Appellees Google

¹ *See* U.S. Copyright Office, “Obtaining Access to and Copies of Copyright Office Records and Deposits,” *available at* <http://www.copyright.gov/circs/circ06.pdf> (accessed March 24, 2014). A true and correct copy is attached as Exhibit A.

and YouTube filed their brief supporting *en banc* review. In that brief, Google and YouTube seek to make various arguments based on a letter from the Copyright Office. That letter appears to have been issued under questionable circumstances; more pertinently, the letter appears to have been provided to Google and YouTube outside the Copyright Office's established procedures for doing so.

Garcia therefore respectfully requests that this Court take judicial notice of the facts set forth above in considering whether to rehear this case *en banc*.

Respectfully Submitted,

April 3, 2014

/s/ Credence Sol

EXHIBIT A

Obtaining Access to and Copies of Copyright Office Records and Deposits

The Copyright Office maintains records of and indexes to deposits, registrations, recordings, and other items related to copyright registration. The Office's records and indexes are open to public inspection and can be copied. Under certain limited conditions, Office staff members can copy or reproduce items deposited with the Office and retained under its control. To assist with searches to locate and copy material, the Office provides various fee-based services. Alternatively, patrons can search certain records independently and copy them for a fee on machines in the Office. Certified copies of certain records are also available for a fee.

NOTE: Copyright Office fees are subject to change. For current fees, see Circular 4, *Copyright Office Fees*, available on the Office's website at www.copyright.gov, or call the Office at (202) 707-3000 or 1-877-476-0778 (toll free).

Fee-Based Services

If you want to inspect or request certified or uncertified copies of Copyright Office records or deposits, other than Licensing Division records, contact the Records Research and Certification Section. Only staff members of the Copyright Office or the Library of Congress can copy or reproduce copyright deposits. The Records Research and Certification Section is open to the public between 8:30 AM and 5:00 PM, eastern time, Monday through Friday, except federal holidays.

You can request copies of records or deposits, or ask to inspect copies of records or deposits, by regular mail, email, or fax, or you can call in your request.

Copyright GC/I&R

P.O. Box 70400

Washington, DC 20024

TEL: (202) 707-6787 or 1-877-476-0778 (toll free)

FAX: (202) 252-3519

copycerts@loc.gov

Please provide your daytime telephone number.

Copies of Public Records Other Than Deposits

Upon request, the Copyright Office will prepare certified or uncertified copies of certain public records. (See page 3 for details about requesting copies of deposits.) To minimize the time needed for searches by the Copyright Office staff, clearly specify the records you want. Doing so is important, because these searches require payment of a fee in addition to the certification fee and the

copying fee. But if you can provide a registration number or, for recorded documents, a volume and document or page number, no search fee is required.

Photocopies of the following copyright-related records can be obtained: affidavits, registration applications, assignments, contracts, licenses, and other documents that have been recorded in the Copyright Office.

Written requests for copies of records should clearly

- 1 identify the type of records you want (for example, additional certificates of registration, copies of correspondence, copies of assignments);
- 2 specify whether you require certified or uncertified copies;
- 3 specify the records to be copied, including, if possible, details about
 - a the type of work involved (for example, novel, lyrics, or photograph);
 - b the registration number, including the letters representing the class in which the work was registered (for example, TX000-000, A000) (required);
 - c the year or approximate year of registration (for example, 1985);
 - d the complete title of the work;
 - e the author(s), including any pseudonym by which the author(s) may be known;
 - f the claimant(s); and
 - g for a copy of an assignment, contract, or other recorded document, the volume and page number of the Copyright Office record where information on the recorded document can be found.

Written requests must also comply with any special requirements outlined below for obtaining copies of certain types of documents. If you request an additional certificate of registration, include the relevant fee. (The Records Research and Certification section will review requests for copies of other items and quote fees for each.) Also include your daytime telephone number, mailing and email addresses, and fax number so a Copyright Office staff member can contact you.

If you cannot provide a year of registration and title for a work, Copyright Office records may have to be searched for purposes of verification. There is a fee for this service. For current fees, visit the Copyright Office website, write the Office, or call (202) 707-6850 or 1-877-476-0778 (toll free).

Additional Certificates of Registration

Copyright registration makes a public record of the basic facts of a particular copyright. The copyright owner of an

original work of authorship or the owner's agent can register a claim to copyright. (See Circular 1, *Copyright Basics*, for information on registration procedures.) After the claim to copyright has been examined and the Office has determined that the claim should be registered, the Office will send the owner of the copyright a certificate of registration under the seal of the Copyright Office. If the registration of a work was made before or within five years of first publication of the work, the certificate of registration will serve as prima facie evidence of the validity of the copyright and of the facts stated in the certificate.

Anyone can request additional certificates of copyright registration by writing to the Copyright Office. The additional certificate has the same legal or evidentiary effect as the original certificate. Although the additional certificate does not include the ribbon and blue backing of the original certificate, it contains the seal and signature of the Register of Copyrights and needs no further certification.

Your request for an additional certificate should include:

- 1 the title of the copyrighted work;
- 2 the registration number (see note below);
- 3 the year of registration or publication;
- 4 any other information needed to identify the registration; and
- 5 the correct fee. For current fees, visit the Copyright Office website, write the office, or call (202) 707-6787 or 1-877-476-0778 (toll free).

NOTE: If you don't know the registration number of the copyrighted work involved, request a search for the number before requesting an additional certificate. Contact the Records Research and Certification Section at (202) 707-6850 for further information.

Certification of Copies

For a fee, Copyright Office records, including registrations, preregistrations, and recordations, can be certified on a regular or expedited basis. Contact the Records Research and Certification Section for additional information. When the Copyright Office certifies a copy of a record, it attaches a statement under the seal of the Copyright Office attesting that the document is a true copy of the record in question. Certified copies are often requested as evidence of the authenticity of documents when litigation is involved. The cost of certification is in addition to any other applicable fees, such as search, retrieval, or duplication fees.

Copies of Deposits

All requests for copies of deposits should be submitted to the Records Research and Certification Section. The Copyright Office does not retain all works deposited for copyright registration. The Office will provide certified or uncertified copies of published or unpublished works deposited in connection with a copyright registration and held in the Office's custody only when one of the following three conditions has been met:

- 1 Written authorization is received from the copyright claimant of record or the owner of any of the exclusive rights in the copyright, as long as this ownership can be demonstrated by written documentation of the transfer of ownership.

If the transfer of the copyright is recorded in the Copyright Office, please include, if possible, the volume and page numbers and approximate year of recordation. Without that information, a search of the Copyright Office files will be necessary, and a search fee will be required.

- 2 The Copyright Office Litigation Statement Form is completed and received from an attorney or authorized representative in connection with litigation, actual or prospective, involving the copyrighted work. The following information must be included in such a request: (a) the names of all parties involved and the nature of the controversy, and (b) the name of the court in which the actual case is pending. In the case of a prospective proceeding, the requestor must give a full statement of the facts of controversy in which the copyrighted work is involved, attach any letter or other document that supports the claim that litigation may be instituted, and make satisfactory assurance that the requested reproduction will be used only in connection with the specified litigation.

Contact the Records Research and Certification Section for a Litigation Statement Form. This form must be used. No substitute will be permitted. The form must contain an original signature and all information requested for the Copyright Office to process a request.

- 3 A court order is issued for a reproduction of a deposited article, facsimile, or identifying portion of a work that is the subject of litigation in its jurisdiction. The order must be issued by a court having jurisdiction over a case in which the copy is to be submitted as evidence.

A request for copies of works deposited in connection with a copyright claim should be accompanied by whatever material is necessary to show that one of the three conditions given above has been met.

Nature of Deposit Copies

When you order a copy of a work deposited in connection with a copyright claim, the Records Research and Certification Section will supply a reproduction of one of the following, depending upon the actual deposit:

- 1 the deposited work;
- 2 any identifying material submitted in lieu of the original work; or
- 3 a reproduction of any facsimile that the Copyright Office is required by law to retain when the deposited article has been transferred to the Library of Congress.

If you request a reproduction of a deposit not retained under the control of the Copyright Office, the Office will inform you of this fact. In the event that a deposit was selected for the Library of Congress collections, you can search the collections at www.loc.gov or send an email inquiry to a librarian at www.loc.gov/rr/askalib/ask-contactus.html.

Copies of Phonorecord Deposits

If you request a reproduction of a phonorecord, such as an audiotape, cassette, CD, or diskette, in which either a sound recording or the underlying musical, dramatic, or literary work is embodied, the Copyright Office will provide proximate reproduction. Because of the characteristics of available sound reproduction, all frequencies contained in the original phonorecord may not be reproduced.

The Copyright Office will provide the title and the registration number of the phonorecord. In response to a specific request, the Copyright Office will provide reproductions of any printed or other visually perceptible material deposited with the phonorecord.

Additional Searches and Records

The Records Research and Certification Section will also initiate in-process searches as well as searches in the correspondence and unfinished business files of the Copyright Office for material that may include original letters from authors and publishers, uncataloged deposit copies (possibly unique examples), and similar information. Because some of these materials are not readily retrievable, consult section staff to determine how long a search will take.

Inspection of Copyright Office Records

You can inspect (a) completed records and indexes related to a registration or a recorded document and (b) copies or identifying material deposited in connection with a completed registration or rejection in the Records Research and Certification Section. Some of these materials are stored outside the Copyright Office; contact section staff to determine how

long it will take to retrieve the requested materials. Inspection hours are Monday through Friday, 8:30 AM to 5:00 PM, eastern time, except federal holidays and are prearranged.

Expedited Services

The Records Research and Certification Section offers expedited services with prior approval. Call (202) 707-6787 for details.

Fees

Fees are cumulative. Certification fees are in addition to any other applicable fees, such as search fees or photoduplication fees. There is an additional charge for each hour or fraction of an hour required to locate all Copyright Office records, except where the requestor supplies the Copyright Office with the registration number and year of registration. For current fees, visit the Copyright Office website, write the office, or call (202) 707-3000 or 1-877-476-0778 (toll free).

Checks or money orders must be made payable to Register of Copyrights. For information on deposit accounts, see Circular 5, *How to Open and Maintain a Copyright Office Deposit Account*. Credit card payments are accepted by phone or in person but not by mail.

Based on the information you provide, the Copyright Office will estimate your total fee. Address all requests for fee estimates to the Records Research and Certification Section.

Payments in excess of the statutory fee will be refunded, but refunds of \$50 or less will be made only upon request. To cover administrative and processing costs, fees received in conjunction with requests for additional certificates of registration will not be refunded even if the additional certificates cannot be provided, usually because no such registration exists.

Accessing Records on Your Own

For details about doing research in the records of the Copyright Office, see Circular 22, *How to Investigate the Copyright Status of a Work*, and Circular 23, *The Copyright Card Catalog and the Online Files of the Copyright Office*.

Public access to Copyright Office records in machine-readable form cataloged from January 1, 1978, to the present, including registration information and recorded documents, is available online at www.copyright.gov. These records include original and renewal registrations and recorded documents, including Notices of Intent to Enforce a Restored Copyright under the Uruguay Round Agreements Act.

The Copyright Card Catalog, which includes about 45 million cards, indexes copyright registrations in the United States from 1870 through 1977. It is open to public inspection in the Copyright Office.

The Catalog of Copyright Entries, published in book form from July 1, 1891, through 1978 and in microfiche format from 1979 through 1982, is available in many libraries throughout the country and online at <http://archive.org/details/copyrightrecords>.

Information such as registration numbers may be obtained from these files. Obtaining this information yourself rather than paying a fee to have the Office search for it will reduce the cost of obtaining records and copies from the Copyright Office.

Note that *The Catalog of Copyright Entries*, the Copyright Card Catalog, and the online files are indexes, not reproductions of original documents. To view or copy the original documents yourself, you must visit the Copyright Office.

Licensing Division Records

The Licensing Division of the Copyright Office maintains records of transactions related to the secondary transmission of copyrighted works on cable television systems and by satellite carriers for private home viewing; the making and distribution of phonorecords; the use of certain works in connection with noncommercial broadcasting; and public performance of copyrighted music on jukeboxes from 1978 to 1989.

The records of the Licensing Division are open to public inspection during hours of public service, 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal holidays, in the Public Records Reading Room of the James Madison Memorial Building. In addition, statements of account for secondary transmissions by cable systems from January 1, 1992, to the present are available at <http://licensing.copyright.gov/search>. Inquiries about documents related to licensing should be addressed to:

*Library of Congress
Copyright Office-LD
101 Independence Avenue SE
Washington, DC 20559-6400
TEL: (202) 707-8150*

For more information about the Licensing Division, see Circular 75, *The Licensing Division of the Copyright Office*.

For Further Information

By Internet

Circulars, announcements, regulations, applications, and other materials are available from the Copyright Office website at www.copyright.gov.

By Telephone

For general information about copyright, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 AM to 5:00 PM, eastern time, Monday through Friday, except federal

holidays. Recorded information is available 24 hours a day. To request paper application forms or circulars, available by postal mail, call (202) 707-9100 or 1-877-476-0778 and leave a recorded message.

By Regular Mail

Write to:

*Library of Congress
Copyright Office-COPUBS
101 Independence Avenue SE
Washington, DC 20559*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 3, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Heather Rowland

Heather Rowland